

UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

## OMNIBUS HEARING

13 BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN  
14 UNITED STATES DISTRICT COURT JUDGE

## APPEARANCES.

17 For The Commonwealth  
18 of Puerto Rico, et al.: Mr. Martin Bienenstock, PHV  
19 Mr. Brian Rosen, PHV  
19 Mr. Hermann Bauer, Esq.

20 For the U.S. Trustee  
Region 21: Ms. Monsita Lecaroz Arribas, AUST

22 For Official Committee  
of Unsecured Creditors: Mr. Luc Despins, PHV  
Mr. Juan Casillas Ayala, Esq.

24 For Puerto Rico Fiscal  
Agency and Financial  
Advisory Authority: Mr. Peter Friedman, PHV  
25 Mr. Luis Marini Biaggi, Esq.  
Ms. Carolina Velaz Rivero, Esq.

1 APPEARANCES, Continued:

2 Fee Examiner: Mr. Brady Williamson, PHV  
3 Ms. Katherine Stadler, PHV  
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5 For COFINA Senior  
6 Bondholders' Coalition: Mr. Susheel Kirpalani, PHV  
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10 For Bank of New York Mellon: Mr. Albeniz Couret Fuentes, Esq.  
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25 CAT.

	I N D E X	
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2	WITNESSES:	
3	None offered.	
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5	EXHIBITS:	
6	None offered.	
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1 San Juan, Puerto Rico

2 December 19, 2018

3 At or about 9:33 AM

4 \* \* \*

5 THE COURT: Again, buenos dias. Welcome to counsel,  
6 parties in interest and members of the public and press here  
7 in San Juan, those observing here and in New York, and  
8 telephonic participants. It is a beautiful week in San Juan  
9 and it is always good to be back in Puerto Rico.

10 My usual instructions about electronic equipment. I  
11 remind you, consistent with Court and Judicial Conference  
12 policies and the Orders that have been issued, there is to be  
13 no use of any electronic devices in the courtroom to  
14 communicate with any person, source or outside repository of  
15 information, nor to record any part of the proceedings.

16 Thus, all electronic devices must be turned off  
17 unless you are using a particular device to take notes or to  
18 refer to notes or documents that are already loaded on the  
19 device; and all audible signals, including vibration features,  
20 must be turned off. No one is permitted to record or  
21 retransmit any part of the hearing, and anyone who's observed  
22 violating these rules is subject to sanctions.

23 Thank you for your compliance with these procedures.  
24 It is now time to begin our agenda with the status report from  
25 the Oversight Board.

1                   Mr. Bienenstock, good morning.

2                   MR. BIENENSTOCK: Good morning, Your Honor. Martin  
3 Bienenstock of Proskauer Rose for the Oversight Board, for  
4 itself and as Title III representative.

5                   Your Honor, the Court has directed a status report on  
6 the general status of the negotiation and formulation of  
7 additional plans of adjustment, as well as the anticipated  
8 timeline for the filing and confirmation of the plans.

9                   As the Court knows, this is not a simple issue, but  
10 I'm going to break it down and try to identify the main  
11 components as they exist now.

12                  As the Court knows, the GDB Title VI has been done,  
13 and that involved about five billion dollars of debt. And  
14 COFINA's approximate 16 billion dollars -- or 17 billion  
15 dollars of debt is scheduled for confirmation hearing on  
16 January 16, 2019.

17                  Negotiations about a PREPA RSA with some of the key  
18 creditors are underway, with PREPA having over nine billion  
19 dollars of debt, and the Board looks forward to resuming  
20 mediation on a Commonwealth plan.

21                  The Board is doing a lot of work to be ready for the  
22 mediation. There will likely be some issues teed up soon,  
23 Your Honor, for which we know there is no likely consensus, at  
24 least in the near term, such as whether the PBA leases are  
25 leases for purposes of Bankruptcy Code Section 365(d)(3), and

1      possibly claim challenges emanating from or related to the  
2      Kobre Kim report.

3              We should likely know in the March or April time  
4      frame how much consensus there is on a Commonwealth Title III  
5      plan. If there is a lot of consensus, we would file a Plan  
6      and Disclosure Statement, which is being worked on now, and  
7      ask for a confirmation hearing as soon as practicable. But if  
8      there is little consensus, the Board will have to determine  
9      whether a cramdown plan should be filed and its likely  
10     timeline.

11              The reasons for lack of consensus will be relevant.  
12      If they are purely legal differences, we may want to try to  
13     tee them up for resolution to eliminate the obstacles to  
14     further negotiation and consensus. We would obviously have to  
15     do so in a manner that would not make the rulings advisory  
16     opinions.

17              If the reasons for lack of consensus on a  
18     Commonwealth plan are largely economic, that, for instance,  
19     the Oversight Board simply doesn't see as much ability to pay  
20     debt as the creditors, then a cramdown plan may make sense,  
21     because the economics may not change for the better. We hope  
22     they do, but there would be no reason to bet on that, except  
23     if the Commonwealth makes certain changes, such as repealing  
24     Law 80 to allow for employment at will. That would create a  
25     tide lifting all boats. People would be better off, and there

1     would be some fallout that would make creditor returns better  
2     as well. But primarily, it would be best for the economy  
3     going forward.

4                     Discussions also continue on non-Title III situations  
5     such as PRASA, University of Puerto Rico and other non-Title  
6     III situations.

7                     Your Honor, I know I wasn't very specific, but I do  
8     think that based on the items to be teed up in the near term,  
9     the mediation to continue, that in the March-April time frame,  
10    we'll be able to give Your Honor a much better, more specific  
11    timeline to actual confirmation hearings.

12                    THE COURT: Well, I'm grateful for the information  
13    that you have shared today. I think it's important that we  
14    inform the general public insofar as it is possible, in as  
15    current a fashion as possible, since there are so many  
16    constituencies that are so deeply involved in and concerned  
17    with the progress of these proceedings.

18                    And so I hear you about March-April. Don't be  
19    surprised if I ask you to make another status report in  
20    January. And I thank you for as much candor as you are able  
21    to bring to each of these reports.

22                    MR. BIENENSTOCK: Thank you, Your Honor.

23                    THE COURT: Thank you.

24                    MR. BIENENSTOCK: Shall I turn over the podium to the  
25    Fee Examiner now?

1                   THE COURT: Yes.

2                   The next item on the agenda is item Roman II.1, the  
3 Fee Examiner's Motion to Impose Additional Presumptive  
4 Standards, and that is docket entry 4370 in case 3283.

5                   Good morning.

6                   MS. STADLER: Good morning, Judge.

7                   The Fee Examiner filed the Motion for Additional  
8 Presumptive Standards after the Court's imposition of an  
9 initial set of presumptive standards that we discussed at an  
10 earlier hearing.

11                  Consistent with that approach, the goal of these  
12 presumptive standards is to put professionals and the public  
13 on notice of the standards that the Fee Examiner intends to  
14 apply when evaluating fee applications.

15                  The Fee Examiner has been concerned since the outset  
16 of his engagement about the imposition of rate increases by  
17 law firms, hourly rate increases, not just because of their  
18 initial impact, but also because of their potential for  
19 exponentially increasing as the case goes on.

20                  The impact of rate increases so far, we have  
21 calculated through the third interim fee period as close to  
22 four million dollars. That number will go up with the fourth  
23 interim fee applications which were just filed. And then of  
24 course we have a year end coming up, and that almost always,  
25 for law firms, means additional rate increases.

1           We have had extended discussions with professionals  
2 about the presumptive standards regarding rate increases and  
3 also with respect to expert witnesses, which is also a subject  
4 of the motion. But the primary discussion has been on the  
5 issue of rate increases.

6           And while no professional has objected to the motion,  
7 and we submitted a redline Revised Form of Order that  
8 addresses the concerns articulated by some professionals, it  
9 is not entirely accurate to say that the motion or the Order  
10 is uncontested, because there are professionals who still  
11 believe that there are provisions in there that are unfairly  
12 stated and will be unfairly applied to the law firms.

13           In particular, there's a continuing concern about the  
14 standards being advisory in nature. And again, the Fee  
15 Examiner's position is that there is no binding decision being  
16 asked of this Court until there's a fee application filed and  
17 an objection has been registered.

18           This is really just an attempt to give professionals  
19 an idea of what to expect in terms of the standards for  
20 reasonableness and what types of issues could flag an  
21 objection so that we can hopefully avoid the need for  
22 contested matters on fees, because that isn't a good use of  
23 anyone's resources.

24           Another issue that has been stated is that the motion  
25 improperly attempts to shift the burden of proof on the

1      reasonableness of fees, and the Fee Examiner disagrees with  
2      that assertion. The burden is always, under the Bankruptcy  
3      Code, on a professional fee applicant to establish the  
4      reasonableness of his or her fees, and that remains whether  
5      there are presumptive standards imposed or not.

6              Again, these guidelines are merely there to provide  
7      parameters for professionals to follow. The Fee Examiner  
8      struggled with the issue of rate increases and considered the  
9      possibility that an absolute prohibition on them might be  
10     appropriate in this case. After evaluating the fee  
11     applications here, speaking to professionals, doing  
12     significant analysis of the billing data of the professionals,  
13     he concluded that it would be more reasonable to allow some  
14     level of rate increases to provide a ceiling, not a floor, for  
15     rate increases to hopefully eliminate the need to have to talk  
16     about this issue in the future.

17              It has been his experience that merely telling  
18     professionals there's a concern and waiting until the end of a  
19     case to calculate the impact and then discuss what to do about  
20     it has been an ineffective way of dealing with this issue. So  
21     the Fee Examiner has tried to get ahead of it, to file this  
22     motion to put everyone on notice about the standards that will  
23     be applied, and to hopefully minimize conflict on that issue.

24              We hope that this does not provide an incentive for  
25     professionals to raise rates if they otherwise would not. We

1      trust that the professionals will follow their professional  
2      ethics guidelines and other limitations on their ability to  
3      adjust fees, and that they will keep in mind the significance  
4      of these proceedings to the overall economy in Puerto Rico  
5      before imposing any rate increases.

6              So the intent is not to open the door for a  
7      free-for-all in rate increases; rather, to provide a  
8      presumptive limit on how high they can go.

9              THE COURT: Well, I thank you for the presentation  
10     and for the summary. And it won't surprise anyone here that  
11     the concerns of the Fee Examiner are deep concerns of the  
12     Court, and so I was pleased when the motion was brought  
13     forward initially.

14              I have some concerns of my own about where things  
15     have come out, and I'd like to flag some issues here. And I  
16     will tell you that it is my intention to impose on you, and  
17     impose on everyone, to have another round of discussions based  
18     on some particular principles that I will flag now and bring  
19     back at the next Omni.

20              MS. STADLER: Certainly.

21              THE COURT: And so first, just for my own context,  
22     are there any particular circumstances that explain the 13.3  
23     percent and 28 percent outlier increase rates that were  
24     flagged in the report that I should understand?

25              MS. STADLER: Not any circumstances that are unusual

1       when addressing this issue with law firms. The applicant that  
2       had those outlying rates has not been recommended for  
3       consensual approval today. It is one of the applications that  
4       has been held over.

5           Several of the applications have that issue, and  
6       that's why you see a number of them not on the list of  
7       recommended applications for approval for the third interim  
8       fee period.

9           In general, professionals assert that they apply  
10       their rate policies uniformly, that they charge the same to  
11       the clients in this case as they do in other cases, and that  
12       those percentages that you see are consistent with their  
13       practices in other cases, in other Chapter 11 cases. And they  
14       maintain that they are reasonable. There is not any  
15       particular extenuating circumstance that has been brought  
16       forward for those.

17           The Fee Examiner has always tried to acknowledge the  
18       realities of certain aspects of the private practice of law.  
19       For example, when an associate is promoted to partner or  
20       shareholder in a firm, that is frequently a time when we see a  
21       rate increase that's generally above the norm, and that seems  
22       to be standard practice and seems to be well-accepted by  
23       clients in Chapter 11 cases. And so those types of rate  
24       increases are actually carved out of the Fee Examiner's  
25       analysis.

1                   So the percentages you see there are real  
2 percentages, and they're generally the result of a firm that  
3 has more than one increase in a year. That's how they -- they  
4 don't tend to say, oh, we're going to increase them 28 or 29  
5 percent today. It's a cumulative thing that happens with a  
6 rate increase at the beginning of the year, mid year and end  
7 of the year.

8                   And so that's another reason that the presumptive  
9 standards are designed to limit the adjustments to one per  
10 year, so that cumulative effect can be mitigated.

11                  THE COURT: And I thank you for pointing me to the  
12 Lexis survey information about year-over-year partner  
13 increases. The cumulative, the compound annual growth rate in  
14 that survey of 4.2 percent as against the 2017 year-over-year  
15 5.7 percent increase suggested to me that 2017 year was  
16 unusually high in relation to the preceding couple of years,  
17 and I just wanted to reality check my reading of that  
18 information.

19                  MS. STADLER: Yes. I think that's accurate.

20                  THE COURT: And is there any survey information of  
21 which you're aware on associate billing rates, particularly  
22 seniority step increases?

23                  MS. STADLER: There are many publicly available  
24 resources that report on rates and rate increases. Very few  
25 of them are in a citable format, as we would consider it in

1       the Blue Book context for legal writing.

2               It is very difficult to carve out the issue of  
3       associate rate increases or seniority increases, because firms  
4       are not required to announce or distinguish what rate  
5       adjustments are based on seniority and what are based on  
6       adjustment or inflation or any other reason.

7               We can often identify them if we have sufficiently  
8       robust data. If we have enough associates from a given firm's  
9       billing time on the case from the beginning, so that we can  
10       track their rate increases and watch what the increases do and  
11       the time that they occur, we can often figure out what portion  
12       is based on seniority and what portion is not. But one of the  
13       primary concerns of the Fee Examiner is that it's difficult to  
14       distinguish.

15               There isn't a specific market benchmark for what is  
16       an appropriate associate rate increase. As there is, as you  
17       cited, the Lexis survey -- there isn't anything that carves  
18       out the specific issue of seniority.

19               What we do know is that general counsel, both in  
20       Chapter 11 cases and outside, have been resistant in recent  
21       years to professionals using their cases as training grounds  
22       for brand new associates. And there is some concern on the  
23       part of market participants that the starting rates of  
24       associates are already somewhat inflated, and that 20 and 30  
25       percent increases per year above that are not reasonable. And

1      they're not something that clients in the private marketplace  
2      are willing to endure.

3                   And all of that has gone into the Fee Examiner's  
4      consideration in determining what appropriate level of  
5      seniority based adjustment should be imposed.

6                   THE COURT: And in general, what -- actually, I'll  
7      take that back. I want to ask that question in a different  
8      context.

9                   You've indicated a concern that the initial discounts  
10     that were provided for in the original approvals will be  
11     eroded by increases, and I would just like you to take me a  
12     little bit deeper into the math.

13                   So is this a concern, that the overall payments will  
14     creep up because the discounted pie is getting larger, or are  
15     you seeing people calculate the discount based on the  
16     uninflated rates only, if that makes sense?

17                   MS. STADLER: I'm not sure I understand the question,  
18     Your Honor. I'm sorry.

19                   THE COURT: All right. So why don't I just ask you,  
20     what sorts of computations underlie that concern?

21                   MS. STADLER: Well, as you know, every professional  
22     in this case was asked to provide a discount off their  
23     standard billing rates. Most did so, but there has not been a  
24     uniform approach to that.

25                   There also has not been a uniform approach to how the

1      discounts will be calculated and applied prospectively. And  
2      there wasn't any corresponding limitation on rate increases.

3                   So the concern, and this is observed in at least a  
4      couple of cases in the application materials the Fee Examiner  
5      has reviewed so far, is that a stated discount at the  
6      beginning of the case which would, on its face, appear to  
7      offer savings, would quickly be recouped through the  
8      subsequent and perhaps more frequent than usual rate  
9      increases. So that within a short period of time, while the  
10     initial rate discount was real and genuine as of the date of  
11     the professional's engagement, that a series of successive  
12     rate increases more frequently than annually, and at rates  
13     higher than the industry norms, have the impact of erasing any  
14     savings that would have been incurred through the discount  
15     process.

16                   So that's the best I can do to articulate that. We  
17     have, you know, calculated what the savings are from the rate  
18     increases, what the cost of -- or what the savings are from  
19     the discounts versus the cost of the rate increases, and in  
20     some professional instances, one has surpassed the other. In  
21     other instances, it hasn't.

22                   Depending on how long the case goes on, it's probably  
23     true that most discounts will ultimately be overtaken by  
24     subsequent rate increases, but the idea is to make sure that  
25     the discount is real and absolute off an appropriate market

1      rate at the time it's charged, rather than being an artificial  
2      discount that is then marked up in another context.

3                    THE COURT: And so I take it that, among other  
4      things, you're not seeing a -- if there were a 20 percent  
5      discount agreed in the first instance on, just for simplicity,  
6      a 100 dollar an hour rate, if that rate is increased to 110  
7      percent, the 20 percent discount multiplier is not being  
8      directly applied to the 110 dollar rate?

9                    MS. STADLER: No, I think that they are, although,  
10     again, there's an important caveat, which is everyone is doing  
11     this a little bit differently. Some firms will calculate  
12     their entire fee application based on their stated standard  
13     rates and then do a below the line deduction, so it's really  
14     easy to see, this is the discount we're offering off the total  
15     price.

16                   Others, I think more commonly in this case, have  
17     adjusted people's hourly rates so that an individual  
18     attorney's hourly rate will be ten or 15 or 20 percent lower  
19     than it ordinarily would be.

20                   And then there are some professionals in this case  
21     that have stated a discount amount, but that will be applied  
22     at the end of the case in the discretion of the professional.  
23     So it's really impossible to know, until the professional  
24     exercises that discretion, how the discount will be applied,  
25     which fees will be subject to the discount, you know, whether

1      the discount will be off the total amount of fees that have  
2      been determined to be reasonable by the Court or the gross  
3      amount charged.

4           So it's very difficult to answer that question with  
5      precision; but I think in most instances, professionals are  
6      increasing the rates that they would charge on a market basis,  
7      and then discounting them in the same amount that they had  
8      indicated they would do so in the beginning of the case.

9           THE COURT: Would it be helpful to have, as a  
10      standard element of interim fee applications, a uniform  
11      display or table that would illustrate the dollar impact of  
12      the discount on the market rate fees in a uniform format each  
13      time so that you can have some sense of comparability, and as  
14      to the one that has the unusual arrangement, still have that  
15      illustrative dollar amount as a benchmark?

16           MS. STADLER: Right. Yes and no. We do that  
17      calculation. We have done that from the outset when we can.  
18      Some professionals disclose it and we verify it. Other  
19      professionals don't.

20           And when we issue our voluminous letter reports to  
21      the professionals, which are of course confidential in the  
22      nature of settlement communications, there's almost always an  
23      exhibit that shows, you know, our calculation, the Fee  
24      Examiner's calculation of what the discounted rate's or the  
25      overall discount's impact has been on the fees.

1                   So that the Fee Examiner is always keeping in mind,  
2 when making determinations about what fees should be subject  
3 to a potential objection, he's cognizant of the fact that  
4 there has been a discount, that there's already some impact on  
5 the professional from that discount. And so he's taking that  
6 into consideration, at the same time, concluding that in the  
7 context of this case, the firms -- the fees still have to be  
8 reasonable, the activities undertaken still have to be  
9 reasonable.

10                  There are, of course, many more components to a  
11 reasonableness analysis than just the hourly rate. So we do  
12 that, I think, for the professionals for whom that calculation  
13 is difficult. It is difficult for us, as it is for them. I  
14 don't know that there's a way to mitigate that other than  
15 changing the way the discount is calculated.

16                  And I'm not -- that would probably require  
17 reexamination of some of the retention agreements, and I don't  
18 know if that's something that the Court is interested in  
19 pursuing or not. I think it's probably more cost effective  
20 for us to continue calculating it, because we now have a  
21 reporting format set up for it, and we can generate that as a  
22 matter of course with our initial set of exhibits and data  
23 reporting.

24                  If the professionals were required to provide the  
25 disclosure, we would still verify it, so I don't think it

1     would hurt, but I don't think that that type of a requirement  
2     would add something that's missing from our analysis already.

3                     THE COURT: All right. Well, I defer to you on  
4     efficiency. I don't want to make anything more complicated  
5     than it needs to be.

6                     My concern was, first of all, that it was being done  
7     somewhere, but frankly, also that through this interim review  
8     process, when we get to the final retrospective determination,  
9     there is some set of benchmark numbers that both the Fee  
10    Examiner and the professionals own at a level of significance  
11    so that I'm not dealing with people who are, you know, some  
12    working in Ukrainian and some people working in French --

13                    MS. STADLER: Yeah. Right. Right.

14                    THE COURT: -- as to what the right benchmarks ought  
15    to be.

16                    MS. STADLER: Right. And that's part of the reason  
17    that the Fee Examiner has tracked this from the very  
18    beginning.

19                    I'd also like to note for Your Honor that we have the  
20    ability to include, in our reporting to the Court, any  
21    information that would be useful to the Court in conducting  
22    its own reasonableness analysis. As I said, we produce  
23    voluminous reports and exhibits to professionals. Everyone  
24    here who's filed a fee application knows what I'm talking  
25    about, and they probably roll their eyes when it arrives,

1      because it tends to be very detailed and complete and, you  
2      know, a line-by-line flagging of issues.

3               Any data that's available from that reporting or  
4      elsewhere in our process can easily be turned into a summary  
5      for the Court with or without designating firm information.  
6      We could do it on an average basis. We could do, you know,  
7      gross amount of savings from discounts compared to gross  
8      amount of impact from rate increases during a given time  
9      period. We could carve out associates. We could include  
10     associates. We could apply different rates. Because we  
11     require the submission of all of the fee applications  
12     supporting material in electronic format, we can really  
13     provide a great deal of granularity for anyone who's  
14     interested in it.

15              The Fee Examiner includes in his reports to the Court  
16     enough information we hope for the Court to make its  
17     reasonableness analysis without inundating anyone with too  
18     much detail. But to the extent that that sort of information  
19     would be helpful, either on an interim reporting or final  
20     reporting basis, we absolutely can provide it.

21              And so we're interested in hearing the Court's  
22     feedback on, you know, the additional revisions to this  
23     particular presumptive standards Order that the Court would  
24     like to see, but prospectively, we're also very happy to  
25     accommodate any other requests for information or imposition

1   || of a standard that we haven't contemplated or articulated to  
2   || the Court.

3 THE COURT: Well, I'm grateful for your confirmation  
4 that the detailed information is both available to me and  
5 fairly easily accessible. Given my limited resources and the  
6 many demands on my attention here, I am very grateful for the  
7 expertise and experiential context of the Fee Examiner. And  
8 the Fee Examiner's expertise and analysis in negotiating, and  
9 reviewing negotiating and coming to recommendations, are very  
10 meaningful to me as review on behalf of the Court in this  
11 interim process.

12 I think I may well ask you for a more granular  
13 presentation toward the end, but one reason that I've engaged  
14 with you in these -- the development of these presumptions and  
15 have made requests for consideration is that in order for me  
16 to be able to be confident of the interim recommendations, I  
17 need to have a good understanding of what the process is and  
18 what the benchmarks are that are being applied by the Fee  
19 Examiner in discussions with the professionals that lead to  
20 those recommendations.

21 Being confident of the Fee Examiner and confident of  
22 the benchmarks, I don't have a need to see the math every  
23 time, because I know what's going on.

24 MS. STADLER: Okay. Thank you, Judge. I appreciate  
25 that.

1                   THE COURT: And so turning to the question of  
2 percentage increases, I am concerned about the, I'll call it  
3 inflationary component of that, the nonseniority component.  
4 I'm concerned about the seniority component as well, but  
5 you've confirmed to me it's difficult to identify benchmarks.

6                   So I think we ought to know, we ought to be able to  
7 disaggregate the seniority component, but for today, I  
8 particularly want to focus on the inflationary component,  
9 because it seems to me that given the unprecedented unusual  
10 nature of these cases, their breadth and the breadth of  
11 demands on the resources of the Commonwealth on the one hand,  
12 on the other hand, the unique professional experience and,  
13 frankly, prestige that is associated with working on these  
14 issues in this distinguished company of professionals is  
15 something that is of value in the mix for professionals  
16 working here.

17                  And so I would like to see, I'll just put it that  
18 way, I'll be flat out with you, a presumptive ceiling of  
19 the -- equal to the annual rate of inflation in the New York  
20 metropolitan area, which is two percent according to the  
21 charts that were cited in the Fee Examiner's report, rather  
22 than five percent.

23                  And I recognize -- I'm not asking that a firm limit  
24 all of its billing increases to two percent. But I think this  
25 is a unique situation, and there are, as you know, concerns

1       within, concerns without, and a -- and this island is a living  
2       organism that has to go on and live afterwards, that has to be  
3       able to allocate and distribute resources that are not going  
4       to be increased, absent some miracle that I don't foresee at  
5       this point, and that the projections don't identify for us.

6               And so I am concerned at every level with the proper  
7       husbanding, to use a sort of antiquated term, of resources.  
8       And there is sacrifice necessary all around, but I also  
9       understand that there are inflationary pressures on all of us.  
10      There is a real discernible rate of inflation, and there is  
11      value that comes from participating in these experiences that  
12      goes beyond the dollars that come in. And so I would like the  
13      Fee Examiner to consider this and to discuss it with  
14      professionals. And I would like to see it in a revised  
15      version of the motion.

16               And if there's opposition to the motion, there's  
17      opposition to the motion on the presumptions, I'll take that  
18      up and we'll talk about it in open court. But that is a real  
19      concern for me.

20               MS. STADLER: We will do so, Your Honor.

21               THE COURT: Thank you. And I would also like to see  
22      seniority rate increases accompanied in the application by a  
23      representation that the increase is consistent with the  
24      firm-wide proportions for whatever the given period is so that  
25      there is -- there is something, there's a representation made

1      as officers of the Court by the firm, and that figure,  
2      disaggregate it.

3              Turning to the disclosure element of the increase  
4      mechanism. The revised proposal carves out professionals  
5      retained by AAFAF and the Oversight Board on the principle  
6      that that information is publicly available and has been  
7      negotiated. It may very well be publicly available here on  
8      the island. It's not easily available to me. And so I would  
9      prefer to see even those professionals required to file  
10     updated information with the Court in advance of the rate  
11     increases for the benefit of the Court and the benefit of the  
12     public.

13              And similarly, the retention related disclosures as  
14     to other professionals, even if there's an exemption from the  
15     Section 327 related template that you've proposed for the  
16     nongovernmental body professionals, having some documentation  
17     on file with the Court in the publicly available ECF system  
18     will be helpful to the Court and to greater public  
19     understanding and acceptance, I believe, of this process and  
20     the significance of the expense of this process for Puerto  
21     Rico.

22              Would it make sense, again, just in terms of overall  
23     cost containment goals, to seek to identify certain types of  
24     work that might presumptively be expected to be performed by  
25     local counsel at the significantly different billing rates

1 than by mainland counsel?

2 MS. STADLER: I think so. I think a lot of the firms  
3 are doing that of their own volition. There certainly are  
4 things that come to mind. I think we've seen a lot of lift  
5 stay motions, and some of those are being handled by the local  
6 counsel. Claims objections, I believe, are or will be  
7 primarily handled locally.

8 So we could certainly come up with some suggestion as  
9 to types of routine commodity work in bankruptcy that should  
10 be performed by local professionals. The challenge with that  
11 is every law firm has a different way of operating in  
12 conjunction with their local counsel.

13 Some law firms are very happy to hand things off to  
14 their very competent local professionals and feel no need to  
15 step in or supervise or oversee. Other firms feel strongly  
16 that they are still making representations to the Court when  
17 documents are signed and filed through pro hoc vice admission  
18 or otherwise, and feel that they, in order to fulfill their  
19 professional responsibility obligations to the clients and to  
20 the Court, need to be aware in some sense of what's happening  
21 with matters that have been delegated to local counsel or  
22 efficiency counsel.

23 We'll have to deal with that, but I do think that  
24 laying out a couple of areas that we think might make sense  
25 for that to be something to encourage people to do, I think

1      that that's a fine idea. And it shouldn't be difficult to  
2      articulate those areas, keeping in mind that obviously the  
3      application of those requirements has to be fact specific --

4                    THE COURT: Yes.

5                    MS. STADLER: -- case specific, firm specific, as our  
6      inquiries always are.

7                    THE COURT: And I understand that particular pockets  
8      of expertise may well differ people to people, firm to firm,  
9      but to have a general benchmark, again, common understanding  
10     of the sorts of work that might properly be expected to be  
11     done by local counsel would be helpful to the Court and I  
12     think helpful overall to the process. So thank you for  
13     undertaking to explore that.

14                   So I would like to turn to the subretained  
15     professionals issue.

16                   MS. STADLER: Yes.

17                   THE COURT: And I noticed in the revised Order that  
18     the restrictions and disclosure requirements and client  
19     consent requirements seem to be proposed only prospectively  
20     and only for new retentions, which it seems to me would  
21     diminish very substantially the impact of the new presumptive  
22     standard and the information that will be available to the  
23     Court.

24                   And so what -- if I'm right about the way that that  
25     was intended to operate, I'll say what I would like to see is

1      to have, even for already retained, subretained professionals,  
2      a benchmark disclosure and confirmation of client consent as a  
3      baseline. And then going forward, disclosure and client  
4      consent for any new retentions, changes in fees going forward.

5                    MS. STADLER: Yes. As you can imagine, that issue  
6      was the subject of vigorous discussion. The reason for that  
7      revision in the revised version of the Order was primarily a  
8      concession that we can't put the horse back in the barn. Once  
9      someone has been retained, it's impossible to predisclose  
10     those things.

11                   And so what we've tried to do is make clear to those  
12     professionals, and in most cases, the professionals themselves  
13     have paid the retained experts out of pocket. And so rather  
14     than indicating to them the entirety of the fee would be  
15     subject to disallowance for that reason, we wanted to provide  
16     a mechanism for those fees to still be considered under the  
17     reasonableness parameters that would normally apply, with the  
18     recognition that there was perhaps some initial disclosure or  
19     consent information that could have been provided, and that  
20     should have been provided and maybe can be provided even  
21     though the horse is out of the barn.

22                   So we can work on that. I think that there will be  
23     additional expert retentions. Many professionals have talked  
24     to us, you know, about specific instances where, we're going  
25     to need to hire someone on this, this, this, this. Should we

1 let you know? When should we let you know? How should we --  
2 do you need to approve it? That sort of thing.

3 And we can talk about that in connection with the  
4 next revision, but Your Honor has hit on a tricky issue for us  
5 and we will continue to work on that.

6 THE COURT: Thank you. It doesn't surprise me that  
7 it's sensitive, but I also think it's fair. And I hope it  
8 will be efficacious for the assembelds to know that it is  
9 something of which I'm concerned.

10 And I'd just like you to confirm that the issue  
11 raised as to the COFINA Agent's retention is something that is  
12 still being worked on and has been carved out of the --

13 MS. STADLER: Yes.

14 THE COURT: -- recommended approval?

15 MS. STADLER: Yes, it has.

16 THE COURT: All right. I think you'll all be happy  
17 to know that that takes me through the major structural  
18 concerns that I had in terms of the motion.

19 I'd just like to ask you, and I realize you need to  
20 speak to this very generally, but there is the potentially  
21 duplicative retention issue with respect to the COFINA Agent  
22 in particular. And so if you could give me a little bit of  
23 insight into how you are going about analyzing what's of  
24 concern, and what sorts of changes you might expect to see  
25 going forward, assuming that there's significant

1 COFINA-related work to be done going forward.

2 MS. STADLER: Right. Yes. Speaking generally, as  
3 Your Honor knows, the Order for the appointment of the COFINA  
4 Agent included provisions for her retention of counsel and  
5 explicitly provided for the retention of a lead counsel firm  
6 and a smaller firm that was designated as municipal counsel,  
7 which on its face makes sense.

8 Our process involves looking not just at the matters  
9 identified as matter codes or names in the fee application,  
10 but also the nature of the tasks provided. And our initial  
11 analysis noted that while the titles of the two different law  
12 firms were distinguishable, that the actual activity of the  
13 two law firms was less so. So that if there were a particular  
14 municipal law component to a specific issue or a specific  
15 motion, it was not clear from the time records. Municipal  
16 counsel is working on this issue. Lead counsel is working on  
17 this issue.

18 Instead, it began to look as if the lead counsel was  
19 vetting some of its work product with the municipal counsel.  
20 Municipal counsel was almost always running its work product  
21 through the lead counsel. And it was difficult to discern in  
22 the beginning the difference.

23 We flagged that issue. We kept an eye on it. We  
24 talked to the professional about it. We asked for more  
25 clarification. We asked them to be mindful of this concern

1      and try to be careful that there wasn't unnecessary  
2      duplication going on.

3                And as the fee periods have progressed, it's not  
4      something that the Fee Examiner feels has gone away. It  
5      continues to be an issue.

6                We're now at a very interesting point because, as  
7      Your Honor well knows, COFINA confirmation hearings are  
8      scheduled for January, and all of those professionals might be  
9      done working, on the best case scenario, by the end of January  
10     or mid February, or certainly in the first quarter of the  
11     year.

12               So we're trying to walk that fine line here between  
13     imposing standards of reasonableness, enforcing those  
14     standards to the extent enforcement is possible, but not  
15     stepping on the toes of professionals in terms of their  
16     professional judgment. And also, not stepping on the toes of  
17     clients who have, of course, the right to ask their lawyers to  
18     perform services for them, as they feel they need to, to carry  
19     out their own fiduciary obligations, et cetera.

20               So given the unique nature of that situation, I think  
21     what we've tried to do is reserve the Fee Examiner's rights to  
22     continue to look at and raise that issue.

23               I think the parties are on notice that if the COFINA  
24     plan is confirmed and they're all filing final fee  
25     applications in the next couple of months, this issue may well

1      be front and center in the discussion of how those final fee  
2      applications will be treated. And if I had to guess, I would  
3      say that the Fee Examiner will likely be seeking some  
4      additional adjustments to fees to address those concerns.

5                    THE COURT: Thank you.

6                    One final issue, which is the footnote regarding  
7      proposed gross-ups in the event that the Puerto Rico tax  
8      principles change. It may be very premature to spend a lot of  
9      time focusing on it now. It may not be necessary at the end  
10     of the day. But should the implementation of the tax happen,  
11     I would like to see some set of principles and uniform  
12     disclosure and presentation format for gross-up proposals.

13                  And I recognize firms have people in different states  
14     and different tax jurisdictions, and it's unlikely that firm  
15     to firm the number would be precisely the same, but it ought  
16     to be as transparent and as easy as possible for the Fee  
17     Examiner and the Court to understand the principles that are  
18     behind requests, over and above even the withholding tax.

19                  The rationale on the withholding tax is obvious. And  
20     I trust also, as the authorities of the Commonwealth consider  
21     tax -- you know, that tax, et al., they think about the  
22     transaction costs of money going in through the front door and  
23     coming out through another door and all of that. So maybe it  
24     will come to pass. Maybe it won't. But the gross-up  
25     component is yet another part that would be in that cycle,

1      but, you know, coming specifically before the Court. And I  
2      would like to have as much information and an analytical tool  
3      that has analytical integrity.

4                    MS. STADLER: Right. I think Your Honor is correct.

5                    There may be a prematurity element here. At the same  
6      time, we don't want to let the horse out of the barn on this.  
7      So we're trying to balance there.

8                    And my understanding, and there are certainly people  
9      in this room that are much more qualified than I am to speak  
10     on this, but my understanding is the legislation passed and  
11     was signed by the Governor.

12                  We've been unable to locate a copy of the Bill, a  
13     copy of the Act, or any legislative analysis that would  
14     indicate when it takes effect, et cetera, et cetera. So it  
15     could be relevant January 1st. It could have been relevant  
16     yesterday. It might not be relevant until next year. We  
17     really don't know.

18                  The purpose of this footnote was to make clear to  
19     professionals that whatever the treatment of that issue ends  
20     up being in the area of billing and fees and fee applications,  
21     it needs to be kept separate from these other types of rate  
22     adjustments that we've been talking about.

23                  We don't want professionals to uniformly raise every  
24     individual timekeeper's rate by 30 percent or 29 percent  
25     effective January 1st in an effort to get ahead of this issue,

1 because it would be impossible later to determine what was the  
2 29, and what was the two, and what was the five, and what was  
3 the 12 and what was seniority based.

4 THE COURT: Yes.

5 MS. STADLER: So -- and I think we have consensus  
6 among the Oversight Board and the Fee Examiner that keeping  
7 the issue separate is really the best we can do at this point  
8 in providing guidance to the professionals. And what else  
9 happens as a result of that, as you said, we'll just have to  
10 see --

11 THE COURT: Yes.

12 MS. STADLER: -- how things unfold.

17 So I apologize for being a little bit behind the  
18 curve on that, but it sounds as though administrative guidance  
19 and clarity is still outstanding?

20 MS. STADLER: Definitely.

21 THE COURT: All right. Well, thank you for your  
22 attention to this, as to all other matters.

23 And so what I will do is enter an Order denying  
24 without prejudice the current motion, which is ECF 4370, in  
25 anticipation of a further revised set of proposed presumptions

1      and procedures that builds on this discussion today. And I  
2      also expect that professionals will be guided generally by  
3      this discussion today in proceeding with their work in the  
4      consideration of fee increases.

5            And I thank you all.

6            MS. STADLER: Thank you, Your Honor.

7            THE COURT: Thank you, Ms. Stadler.

8            MS. STADLER: Thank you.

9            THE COURT: Mr. Despins.

10            MR. DESPINS: Good morning, Your Honor.

11            THE COURT: Good morning.

12            MR. DESPINS: Luc Despins with Paul Hastings.

13            Very, very briefly, two comments. First, I want to  
14   say, I hope I won't live to regret this, but the Fee Examiner  
15   has an impossible job. I think they're doing a very good job,  
16   considering all the push and pulls that are involved in that  
17   process.

18            But I wanted to address one issue, which is the cost  
19   of living proposal that Your Honor suggested. And I want to  
20   make -- and I know this is not the hearing where this is going  
21   to be decided, but I just wanted to make sure the Court and  
22   the Fee Examiner have in mind, you know, not all professionals  
23   have the same contract or agreements.

24            Some agreed to the largest discount, 20 percent.

25            Some were told by their partners they should have their heads

1      examined to have agreed to that. But that is beside the  
2      point. That has been agreed to. But that contract, that  
3      agreement, also has other features. And when we negotiate  
4      with a client, I've never given discounts in bankruptcy, but I  
5      know you always look at two things: One, what's the discount,  
6      and are you frozen at those rates.

7                And in our case, you know, the Order says that the  
8      rates can be increased, as they are increased for all clients,  
9      not just for this client, as you know, over time. And the  
10     fees have to be reasonable. There's no doubt about that.  
11     It's our burden. We understand that.

12                But the problem we have is that to have a two  
13     percent, one-size-fits-all, when some firms are giving a five  
14     percent discount, others 15, our firm, 20, is a difficult  
15     issue when, you know, this is not a new issue, meaning it was  
16     specifically provided that our fees could be increased, as  
17     they are increased for all other clients.

18                So I know this is not the time to argue that, but I  
19     just wanted to add that dimension to the discussion.

20                THE COURT: I do understand that it's serious. I do  
21     understand that it's complicated. These proceedings have --  
22     could have been expected to be complicated, I think in some  
23     ways have been far more complicated and expensive across the  
24     board than they might have been in another scenario, probably  
25     less complicated than they could be, they could well be.

1                   So I guess I would say two things: I hear what you  
2 are saying, and I take seriously the contextual issues and I  
3 trust that they will be discussed. I also hope and trust that  
4 professionals and their partners will take to heart and take  
5 seriously the comments that I've made today, and the rationale  
6 that I've offered for the comments that I've made today. And  
7 bear in mind that Orders that are not final can always be  
8 revisited by the Court.

9                   And, you know, personally, I know what it's like to  
10 have, we'll just put it, way less control than I'd like to  
11 have in an ideal world over my own ability to budget and be on  
12 a fixed income in a life that has become exponentially more  
13 complex and demanding than I originally signed up for. So if  
14 that helps, I can feel your pain.

15                  MR. DESPINS: Thank you, Your Honor.

16                  THE COURT: Thank you.

17                  Mr. Williamson.

18                  MR. WILLIAMSON: Actually, Your Honor, your last  
19 comment may be the most significant comment of the morning.

20                  Good morning, Your Honor. Brady Williamson, Godfrey  
21 & Kahn, Fee Examiner.

22                  In light of the extended discussion, I will be very,  
23 very brief. There is no shortage, from our perspective, of  
24 either data or discussion. And I simply want to add to the  
25 record that the data to which we have access is not limited to

1      this case. It encompasses several other major Chapter 11s, of  
2      which some of the parties and counsel in this room are  
3      involved.

4           So the purpose of making that point is to, in effect,  
5      reinforce what I think everyone has said this morning, which  
6      is one size does not fit all. So that with this massive data,  
7      we can provide data on virtually everything down to the  
8      individual staff member, the individual associate. The  
9      challenge is making judgments based on that data. And the  
10     Court's comments this morning, obviously, are very, very  
11     helpful.

12           I would simply end by saying that obviously  
13     professionals have a role. The Fee Examiner has a role. The  
14     Court has a role. But as a reminder, the clients have a role  
15     as well.

16           THE COURT: Yes.

17           MR. WILLIAMSON: And that is particularly true on  
18     rate increases, which is why we made it a component of the  
19     presumptive motion.

20           Your Honor, I don't know if the Court was going to  
21     treat the specific applications as a separate matter or not,  
22     but --

23           THE COURT: Well, it's the next matter.

24           MR. WILLIAMSON: Then I'll leave that to the Court  
25     and Ms. Stadler. Thank you.

1                   THE COURT: Thank you.

2                   So, Ms. Stadler.

3                   MS. STADLER: Thank you, Judge. This one should be a  
4 little more straightforward.

5                   As you know, in connection with the last Omnibus  
6 Hearing, we recommended a group of third interim fee  
7 applications for Court approval. That Order was entered in  
8 November.

9                   There were several applications from the third  
10 interim fee period, and some from prior interim fee periods,  
11 that remained outstanding. There are various reasons for  
12 that. Some of them have to do with the data issue that  
13 Mr. Williamson was just discussing.

14                  Most law firm billing software can generate the  
15 electronic data that we request very easily, but as Your Honor  
16 can imagine, many law firms have lots of different  
17 engagements. Many law firms have four different clients.  
18 There are contracts that govern certain parts of engagements  
19 and that don't govern others. And so for some professionals,  
20 providing data that matches their fee application has proven  
21 to be a challenge, and so that's caused some delays in some  
22 treatment.

23                  In other words, it is just a function of the sheer  
24 volume, the number of the issues that have been identified and  
25 the time it takes to go through and meaningfully address each

1 and every one of them.

2                   We hope that the professionals and the Court are  
3 cognizant of the interim compensation procedures which allow  
4 professionals to receive 90 percent of their requested fees on  
5 a monthly basis while this process plays out.

6                   THE COURT: Yes.

7                   MS. STADLER: And ultimately, we think that we'll  
8 reach the right result with all of these professionals, with  
9 the goal, of course, being not to have contested fee  
10 applications here.

11                  THE COURT: Yes.

12                  MS. STADLER: So the ones that are on the list for  
13 today don't fall into one of those categories. They merely  
14 required a little more time than those that were approved in  
15 November. I think they are straightforward.

16                  As we noted in our colloquy a moment ago, there are a  
17 couple of issues that are carved out. Namely, the fees for  
18 the COFINA Agent's expert have been pulled out of this  
19 analysis entirely. We're going to treat that as a separate  
20 line item, and we're going to do a separate and independent  
21 reasonableness analysis of those fees, subject to further  
22 discussion of the disclosure issue that we talked about.

23                  Other than that one issue, I think all of the  
24 applications we're recommending for approval today are fairly  
25 straightforward. Some of the professionals have accepted

1 fairly significant deductions to their fees in recognition of  
2 some of the issues we've been talking about today. But in the  
3 end, the Fee Examiner is satisfied that the applications he's  
4 recommending for approval today are reasonable under the  
5 PROMESA reasonableness standards which, of course, incorporate  
6 those in the Bankruptcy Code, and asks the Court to enter an  
7 Order approving those fees as noted on the exhibit to our  
8 report.

9 THE COURT: I've reviewed carefully the report, and  
10 the context that the Fee Examiner has provided today, and at  
11 earlier sessions, hearings, and in earlier reports. And I  
12 find that the proposed -- the fees proposed for approval on an  
13 interim basis are reasonable, and I will enter the Proposed  
14 Order in connection with docket entry number 4455.

15 MS. STADLER: Thank you, Judge.

16 THE COURT: Thank you.

17 And again, thank you to Mr. Williamson.

18 Thank you, Ms. Stadler.

19 And so the next item on the agenda is the Motion for  
20 Relief from the Automatic Stay of AMPR, which is ECF number  
21 3914.

22 MR. BARRIOS: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. BARRIOS: For the record, Attorney Jose Luis  
25 Barrios Ramos on behalf of Asociacion de Maestros de Puerto

1 Rico.

2 THE COURT: Good morning.

3 MR. ROSEN: Good morning, Your Honor. Brian Rosen  
4 from Proskauer Rose on behalf of the Oversight Board.

5 Your Honor, as Mr. Bienenstock mentioned before,  
6 there are a lot of discussions that are going on in connection  
7 with prospective plans of adjustment. And a lot of that  
8 involves negotiations, discussions among the Oversight Board,  
9 AAFAF, and obviously the movants in this situation, the AFT.

10 In light of those ongoing discussions, the parties  
11 have agreed that the consideration of the motion which is up,  
12 the Motion for Relief from Stay, would be adjourned until the  
13 next Omnibus Hearing, Your Honor, to January 30th, subject to  
14 the continuation of the automatic stay and the rights of the  
15 parties to agree to any further adjournment of the matter.

16 MR. BARRIOS: Yes, Your Honor. We have agreed to  
17 those terms, and we request the adjournment and the stay to be  
18 in place until the next Omnibus.

19 THE COURT: The requests are granted. Thank you.  
20 And thank you for continuing to work toward resolution.

21 MR. BARRIOS: Thank you, Your Honor.

22 MR. ROSEN: Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. ROSEN: Your Honor, the next item on the agenda  
25 is another Motion for Relief from Stay. I don't know --

1                   THE COURT: The *Rivera Carrasquillo*, I had a message  
2 last night that I was being asked to take that under  
3 advisement and decide on the papers, and I will do that.

4                   MR. ROSEN: That's my understanding as well, Your  
5 Honor.

6                   THE COURT: And so the next motion would be COFINA's  
7 Motion to Authorize Rejection of the Lehman Debt Service  
8 Deposit Agreement, number 4374.

9                   MR. ROSEN: Yes, Your Honor. And I hope the balance  
10 of the agenda goes as quickly as those last two matters.

11                  Your Honor, interestingly, although this was -- it  
12 was our motion to seek to reject the DSDA, as it's referred  
13 to, there was a response that was filed by Lehman, but it was  
14 not a response in opposition. Rather, it was an  
15 acknowledgment, Your Honor, that the rejection was  
16 appropriate, could be done, but it included a reservation of  
17 rights that Lehman believes it may have with respect to the  
18 Trustee, who is the third party to that Debt Service Deposit  
19 Agreement.

20                  We did file a response just merely to note that we  
21 did not think they had any claims, but if they did, those were  
22 separate claims that they could assert at any particular time  
23 in the future, and it was not really something that would come  
24 in in the context of this motion to reject the DSDA.

25                  So with that being the case, Your Honor, and really

1 no formal opposition, we would ask the Court to grant the  
2 relief and to enter the Order that we submitted with our  
3 motion, Your Honor.

4 THE COURT: Well, I have thoroughly reviewed all of  
5 the submissions, and I've done so in the context of the  
6 requirements of Section 365. I find, based on COFINA's  
7 unrebutted proffers, that the rejection of the DSDA is a  
8 proper exercise of COFINA's business judgment. And so Lehman  
9 has its rights under Section 365(g) to file a claim for  
10 rejection damages, and under our procedures that proof of  
11 claim has to be filed by 35 calendar days out from entry of  
12 the Order.

13 I express no opinion regarding Lehman's purported  
14 reservation of rights as against the Trustee. And I will  
15 enter COFINA's proposed Form of Order, which is Exhibit A to  
16 docket entry 4374.

17 MR. ROSEN: Thank you very much, Your Honor.

18 THE COURT: Thank you.

19 MR. ROSEN: Your Honor, the next three items -- or  
20 two items. Excuse me.

21 THE COURT: Yes.

22 MR. ROSEN: Two items are COFINA confirmation related  
23 items. And if I could bundle them together, because I think  
24 it really does all go together. And there is another aspect  
25 of it that really is not mentioned there, but it's part of it,

1      which is the ongoing consideration of the motion that was  
2      filed pursuant to Bankruptcy Rule 9019 to approve the  
3      compromise and settlement.

4           So, Your Honor, if I could just give the Court a  
5      little bit of an update as to where we are on all of those  
6      matters, including the confirmation process.

7           THE COURT: I'd be grateful.

8           MR. ROSEN: Thank you, Your Honor.

9           And if I could take it in the order of the 9019  
10      first, because I think it precedes it.

11           Your Honor, as you know, there were four objections  
12      that were filed to approval of the 9019 motion. One of  
13      those -- and the Oversight Board did file a Response in  
14      accordance with the date set by the Court. And so we believe  
15      that we've put before the Court now the objections and the  
16      responses.

17           One of those objections was filed by the Retiree  
18      Committee, and it also included a request for some documents  
19      to be produced, as well as certain interrogatories to be  
20      answered. We did respond, and we did have a meet and confer  
21      with respect to those discovery requests.

22           And the parties did come to an understanding with  
23      respect to the documents that would be provided. That was  
24      included in a Stipulation and a Protective Order that was  
25      submitted yesterday to the Court.

1                   As part of those conversations, Your Honor, we also  
2 addressed the substance of the issues that were raised in the  
3 Retiree Committee's objection. And we -- as we noted in the  
4 Reply that was filed, we felt that virtually all, if not all,  
5 of those positions that were being espoused by the Retiree  
6 Committee had nothing really to do with the substance of the  
7 9019 motions or the merits. But nevertheless, as part of  
8 these ongoing discussions that we're having with AFT, the  
9 Retiree Committee, towards a plan, we wanted to have a  
10 detailed discussion to try and resolve any of their ongoing  
11 concerns.

12                   One of the issues that was raised by the Retiree  
13 Committee was a question regarding whether or not the new  
14 indebtedness, which is to be issued by COFINA pursuant to the  
15 COFINA Plan of Adjustment, as well as the possible  
16 indebtedness that might be issued for the benefit of the  
17 Commonwealth pursuant to the COFINA Plan of Adjustment would  
18 be included in the constitutional debt limit that is out there  
19 and that a lot of people have talked about several times over.

20                   Your Honor, we, again, don't believe that that is the  
21 subject or should be the subject of a 9019 motion, but we  
22 engaged with the Retiree Committee on that basis. And what we  
23 did, the Oversight Board does have an opinion with respect to  
24 this indebtedness, and specifically, the indebtedness which  
25 may be issued for the benefit of the Commonwealth pursuant to

1       the COFINA Plan.

2                   We believe it is something that is very important.  
3       We actually agree with the substance of the concerns of the  
4       Retiree Committee, but both parties agree, Your Honor, that it  
5       is something that should probably be taken up in the context  
6       of a -- excuse me, a Commonwealth Plan of Adjustment, rather  
7       than the 9019 motion and the COFINA Plan of Adjustment  
8       confirmation hearing.

9                   So as a result of that and our commitment to have a  
10      further dialogue with respect to that issue, I am pleased to  
11      report that the Retiree Committee has agreed to withdraw its  
12      limited objection to the 9019 motion, leaving only those three  
13      remaining objections that were filed.

14                  I don't know if there is anyone from the Retiree  
15      Committee in the courtroom here or there, but I was able to  
16      represent that they would be making that withdrawal, Your  
17      Honor.

18                  THE COURT: Thank you.

19                  MR. BENNAZAR ZEQUEIRA: Buenos dias.

20                  THE COURT: Buenos dias.

21                  MR. BENNAZAR ZEQUEIRA: Antonio Juan Bennazar  
22      Zequeira from the firm of Bennazar, Garcia & Milian, together  
23      with my partner, Hector Mayol. We are co-counsel to the  
24      Official Retiree Committee, together with the attorneys of  
25      Jenner & Block.

1                   And what brother counsel Rosen has just stated is  
2 absolutely accurate. And these conversations will continue.

3                   You probably understand very well why we are  
4 concerned. We have over 167,000 constituents whose pensions  
5 need to get paid, and we are concerned that the Commonwealth  
6 will have enough resources to do that. But the communications  
7 with the representatives of the Board are good. There's a lot  
8 of communication. There's a lot of telephone calls,  
9 conferences, meetings.

10                  And we hope that this dialogue will eventually lead  
11 to a Plan of Adjustment of the Commonwealth that will provide  
12 for the pensioners of Puerto Rico. Thank you.

13                  THE COURT: I am glad to hear this. I just have one  
14 technical question. Will you be filing a notice withdrawing  
15 the objection?

16                  MR. BENNAZAR ZEQUEIRA: I understand it was filed  
17 last night, or it was about to, from our New York firm.  
18 Jenner was going to file that notice. I thought it had been  
19 filed.

20                  THE COURT: I may have missed it. But as long as I  
21 can expect it will be filed, that means I don't have to  
22 compose an Order that says it was withdrawn. So thank you.

23                  MR. BENNAZAR ZEQUEIRA: You're welcome.

24                  MR. ROSEN: Thank you, sir.

25                  Thank you, Your Honor.

1           I am not sure it was filed, but we will make sure  
2 that one will get filed if it has not been already.

3           THE COURT: Thank you.

4           MR. ROSEN: Your Honor, turning to the substance of  
5 the confirmation process, and also picking up on the dialogue  
6 that you had previously about the claims process, I just want  
7 to -- and the claims objection and who's handling what, I just  
8 want to report to the Court that through the dialogue that we  
9 have had with the administrative office in Washington on  
10 behalf of the Court and the Clerk of the Court several weeks  
11 ago, 16 Omnibus objections were filed. Most of them, if not  
12 all of them, pertaining to the approximately 3,500 claims that  
13 were filed in the COFINA case.

14           And I think, as I previously indicated, there were  
15 over 10 trillion dollars of claims filed in the COFINA case,  
16 when there is only 17 billion dollars worth of funded debt.  
17 So we knew that there might have been a little bit of fluff in  
18 those claims, and we've done our best.

19           And besides the Omnibus objections that have been  
20 interposed, Your Honor, we've done our best to clear the  
21 balance of the claims registered with respect to COFINA.

22           Three additional Omnibus objections are going to be  
23 filed today. The hearings on these are laid out in accordance  
24 with the discussions that we've had with the administrative  
25 office, and they won't have to be heard at all prior to the

1 confirmation hearing. We just wanted them on file.

2                   Additionally, many Notices of Withdrawal of Claims  
3 are being filed by the respective claimants. We've reached  
4 out to all of those because one, they didn't want to be the  
5 subject of an objection, but two, they understood that the  
6 master proofs of claim that had been filed by Bank of New York  
7 covered the bonds themselves and there was no need for it.

8                   Likewise, many claims have been filed by actually GO  
9 holders, who are people who held bonds against PBA, but they  
10 filed it to preserve their rights against COFINA. And they  
11 have voluntarily agreed to withdraw those claims as well. So  
12 I have --

13                  THE COURT: And so are you tracking and reconciling  
14 that?

15                  MR. ROSEN: Yes, we are, Your Honor.

16                  And part of the Notices of Withdrawal that are being  
17 filed are also authorizing Prime Clerk to remove those from  
18 the claims registry as well. So hopefully we'll get down to  
19 the -- and we're also going to be filing some individual  
20 claims. Because of the Omnibus Procedures Order that was  
21 entered, they're not susceptible to an Omnibus objection, but  
22 again, we wanted to clear the docket up. They are not on for  
23 any time in the near future, but we wanted those on the record  
24 just to rid the claims registry of it.

25                  In my world, Your Honor, I believe that there

1     probably should be ten claims or so in COFINA down from 3,500,  
2     but we will get close to it by the end of the day. So that's  
3     been a very positive process, and I appreciate all the efforts  
4     of not only the team of O'Neill Borges and Proskauer, but also  
5     all the creditors' counsel who have been working with us to  
6     enter those Notices of Withdrawal to clear up the docket.

7                   THE COURT: I thank you all. And I also do thank you  
8     for working with our third branch representative out of the AO  
9     to coordinate our administration of our end of the process.

10                  MR. ROSEN: We will be having more dialogue with that  
11     office, Your Honor, as we continue to develop the claims  
12     objections procedures on a more substantive basis.

13                  We've already had initial conversation, but I think  
14     it will entail perhaps a trip to Washington to sit down with  
15     the office to really get into the substance of it.

16                  THE COURT: That's very good news. Thank you.

17                  MR. ROSEN: Your Honor, with respect to the  
18     confirmation process itself, the objection deadline is January  
19     2nd, and to date, we have not received any objections.

20                  We do understand, however, Your Honor, that you and  
21     the court might have been the recipient of a mail order  
22     campaign, with being flooded with letters. And we appreciate  
23     the Court posting those on the docket so we can see what is  
24     being said, but we also took note of the Court's entry of an  
25     Order which said those are not formal objections to the

1 confirmation process.

2                   But we still want to hear what people are saying, and  
3 we want to try and address it, or at least in the context of  
4 the confirmation process, the hearing itself, be able to  
5 present to the Court enough information so that those people  
6 who have informally raised those concerns to you will be  
7 heard. And you'll understand the process that was gone  
8 through, and you'll be able to address that when addressing  
9 the confirmation process itself.

10                  THE COURT: I am very glad to hear that. As you've  
11 seen, a lot of those raise social and economic concerns, but  
12 they are very real concerns in very real lives. And some of  
13 them also indicate, you know, possible lack of understanding  
14 of some of the mechanics of the issues that are before the  
15 Court in the confirmation proposal and in the 9019.

16                  And so I do hope and trust that in your submissions  
17 and advocacy, you'll provide both a narrative and any  
18 necessary factual information and representations to be able  
19 to enable me to address it, enable the public to understand in  
20 an appropriate factual context what's being proposed.

21                  It's not a situation in which everyone, everywhere in  
22 all of the constituencies of parties in interest will ever --  
23 could rejoice together no matter what my ruling is on these  
24 motions, but it is very important for everyone to have an  
25 accessible information base and an understanding of what's

1    happened and why. And I appreciate your taking that up  
2    seriously.

3 MR. ROSEN: Thank you, Your Honor. We will do our  
4 best.

5 THE COURT: May I just say something --

6 MR. ROSEN: Sure.

7 THE COURT: -- in that connection? I am considering  
8 and think that it would be important, in addition to the  
9 specific objection filing procedures, which we've made clear  
10 and provided, in addition to my close attention to everything  
11 that comes in in my mailbox, and electronic and physical, to  
12 have an opportunity in connection with the 9019 motion and the  
13 plan confirmation for a designated segment of time for a  
14 limited number of members of the public, chosen at random from  
15 people who express a desire to speak, through a process that  
16 I'll devise and publicize, to be able to come to court and  
17 make brief remarks on the order of a five-minute limit.

18 And I'd like to find an hour or two in the course of  
19 the day. I realize that we will have a lot to get done if  
20 it's a one-day hearing, or even a day and a half hearing, but  
21 I want to notify you of that.

22 MR. ROSEN: Certainly.

1 would need to take place, so that we can think very  
2 realistically, and I can think more realistically, about what  
3 needs to be arranged.

4 MR. ROSEN: Absolutely, Your Honor.

5 Just to let you know about the notice and the  
6 balloting process that is going on, pursuant to the  
7 solicitation procedures Order or the disclosure statement or  
8 whatever you want to call it, radio spots have been airing,  
9 notices have been published in newspapers, and the balloting  
10 has commenced.

11 We know that because we have been receiving some  
12 phone calls from beneficial holders about how do I actually do  
13 this, because they're nominees through DTC, and how things  
14 trickle down, they don't sometimes accurately explain it.

15 So we've been addressing all of those, and we're  
16 actually working with the balloting agent to perhaps put  
17 another thing out there through DTC to make it even in simpler  
18 English, more plain for them. But we are starting to see the  
19 balloting roll back, and so we are happy to report that.

20 Going to your comment about process, and this is  
21 consistent with the 9019 motion as well, we are in the process  
22 of putting together declarations in support for both the 9019  
23 motion and for the confirmation process.

24 The time to respond to objections that are interposed  
25 with confirmation is January 9th, and so we are anticipating

1 filing those declarations in support on January 9th. And we  
2 would use those, Your Honor, as direct testimony in the  
3 context of confirmation to perhaps lighten the burden of the  
4 Court.

5 The only ballot that would not be filed at that time  
6 would be the ballot -- excuse me. The only declaration that  
7 would not be filed would be the declaration of the balloting  
8 agent, because the period closing -- it closes for elections  
9 and votes to accept the plan on January 8th. And it takes  
10 them a little bit of time, perhaps even up to a week, to  
11 finish the tabulation process.

12 So that declaration of balloting agent could be filed  
13 as late as the day before confirmation, but it clearly would  
14 be prior to the commencement of the confirmation hearing. And  
15 obviously, Your Honor, any of the declarants for those  
16 declarations would be available in the courtroom for  
17 cross-examination or any additional questions that the Court  
18 would have for either the 9019 motion or the confirmation  
19 hearing itself.

20 Your Honor, the only other point that I would -- I  
21 guess as part of that, Your Honor, and we'll get to this later  
22 on, would be where you would like to have that window of  
23 opportunity to be placed within the 9019 motion hearing or the  
24 confirmation hearing.

25 It would be my guess, Your Honor, that we would start

1       with the 9019 motion and then move to the confirmation  
2       process. And whenever you want to fit that window in there,  
3       we'll work with the Court's time frame.

4                   THE COURT: Well, I think since we will be taking  
5       them up separately and there are, you know, different ways of  
6       -- concerns, that it would be appropriate to have a window  
7       within each.

8                   MR. ROSEN: Okay.

9                   THE COURT: A window within 9019 and then a window  
10      within COFINA. And in my solicitation of interests, I'll  
11      probably have -- we haven't figured out exactly how we'll put  
12      it up, but it may be a registration thing. But as a tick box,  
13      do you want to talk about the Commonwealth-COFINA or do you  
14      want to talk about issues within the COFINA Plan?

15                  It seems to me that it would be most appropriate to  
16      have that follow the principal presentations of counsel since  
17      you do anticipate being able to speak to some of the themes of  
18      concerns, and then to have it follow principal presentations  
19      and then itself be followed by the reply presentations.

20                  MR. ROSEN: That's fine, Your Honor. We will do  
21      that.

22                  Your Honor, we are trying to put together, in a  
23      detailed form, the letters that you've been receiving. And  
24      would it be helpful for you to -- for us to present you with  
25      some sort of chart that would lay it all out?

1                   THE COURT: That would be quite helpful. Thank  
2 you.

3                   MR. ROSEN: We'll do that, Your Honor.

4                   THE COURT: I have been reading them as they come  
5 along, but I haven't charted them out. So it would be good to  
6 have a chart and record.

7                   MR. ROSEN: And we'll try to separate them by  
8 themes.

9                   THE COURT: Thank you.

10                  MR. ROSEN: Your Honor, the one other note that I  
11 would make is that consistent with what I said before about  
12 people working together, we have been collaborating with the  
13 O'Melveny firm on behalf of AAFAF and all of the creditors in  
14 connection with the preparation of documents for the plan  
15 supplement. And I am happy to report that that is well on its  
16 way.

17                  And people know that there is a limited time to  
18 finish those documents, and to the extent that it's going to  
19 interfere with their holiday plans, so be it. But it will be  
20 filed by the end of the year, which is the time frame  
21 associated in the Solicitation Procedures Order.

22                  THE COURT: Excellent.

23                  MR. ROSEN: Your Honor, that leaves to be discussed,  
24 about the confirmation hearing, the urgent motion that we  
25 filed with respect to Section 19.5 of the plan. And as the

1      Court is aware, there is an outstanding issue with respect to  
2      two pieces of litigation that were commenced against the Bank  
3      of New York Mellon, one by Whitebox Advisors and the other by  
4      Ambac Insurance.

5              And the plan provides for a mechanism so that those  
6      litigations could continue if the parties so desire, but not  
7      have it in any way impact the distributions that would  
8      otherwise be made to any of the holders of COFINA bonds,  
9      either senior or subordinated.

10             And the reason for that, Your Honor, is the Bank of  
11     New York Mellon would like to assert that it has a charging  
12     lien and, therefore, any of the fees and expenses that might  
13     be incurred in connection with those litigations on a going  
14     forward basis, they would need to reserve against, and thereby  
15     taking it out of all of the other parties' distributions to be  
16     made pursuant to the COFINA plan.

17             But as part of the negotiation process, we were able  
18     to get the parties to agree, and specifically the Bank of New  
19     York Mellon to agree, that it would not do that, but instead  
20     it would be focusing on Ambac and Whitebox as the plaintiffs  
21     in those actions and any distributions that might otherwise be  
22     made to them.

23             As part of the ongoing dialogue and with the benefit  
24     of Judge Houser as the mediation team leader, we were able to  
25     come up with a mechanism for those matters to be heard in the

1      context of the confirmation hearing. So that if the Court  
2      determines to confirm the plan, we can go forward right away  
3      with the effectiveness of the plan and have the concerns of  
4      Bank of New York Mellon with respect to those two litigations  
5      reserved or at least taken into account by the money either  
6      being in cash set aside or by a bond being posted by Ambac and  
7      Whitebox.

8                   And there is a disagreement between those three  
9      parties as to which is the proper form of currency, but that  
10     is something that will be left to the Court to determine.

11                  Specifically, Your Honor, pursuant to the urgent  
12     motion, the parties have agreed that there will be dual  
13     submissions and they will be done at the same time. On  
14     January 2nd, which is the objection deadline to confirmation,  
15     Bank of New York Mellon would submit information concerning  
16     what amount of fees and expenses it is anticipating to incur  
17     in connection with the two subject litigations. And -- excuse  
18     me, and Whitebox and Ambac would file briefs or declarations  
19     supporting their position that no amounts are required to be  
20     posted or withheld from their distributions.

21                  And then on January 9th, which is the response  
22     deadline for the Oversight Board to respond to otherwise --  
23     objections to confirmation, there would be a similar deadline  
24     for those parties to make filings.

25                  Specifically, Your Honor, Ambac and Whitebox would

1 have to submit counter designations or counter declarations to  
2 the amount that Bank of New York Mellon believes it will  
3 incur. And Bank of New York Mellon would have to submit to  
4 the Court a brief in opposition or counter to the position  
5 taken by Ambac and Whitebox as to the entitlement of any  
6 amount to be posted or otherwise withheld.

7 There is a period of the 10th to the 15th where the  
8 parties could take depositions of the other parties, and then  
9 this Court would then hear, at the confirmation hearing, the  
10 issue first as to the entitlement. And if it makes a  
11 determination there would be an entitlement, as to what amount  
12 should be posted or otherwise tendered in cash to preserve the  
13 rights of the respective parties.

14 THE COURT: And so you are anticipating a bench  
15 ruling on the entitlement issue, then to be followed  
16 immediately by any necessary evidentiary proceedings?

17 MR. ROSEN: Yes, Your Honor. And that's why the goal  
18 was to actually have all of the evidence before you prior to  
19 the hearing so that it really did not take up much of your  
20 time on the 16th to hear anything really, other than what  
21 additional argument you may want with respect to the  
22 entitlement issue, because both parties would have already  
23 said their pros and cons as to the amount and the form of any  
24 posting that would occur.

25 THE COURT: And I'll have obviously the necessary

1      portions of the indenture and whatever other contractual  
2      documents the parties are relying on for their legal positions  
3      on entitlement?

4                    MR. ROSEN: Exactly, Your Honor. They will include  
5      that in their submissions.

6                    So, Your Honor, if the Court would think -- and I  
7      don't want to -- I see somebody's already maybe getting close  
8      to the lectern over there in New York. We would submit, Your  
9      Honor, that the process that was developed by the mediation  
10     team leader and agreed to by the parties is the right process  
11     to go by.

12                  And if the Court would agree, we would ask the Court  
13     to enter the Order then with respect to that process, which  
14     was attached as an exhibit to the Urgent Motion that was  
15     filed.

16                  THE COURT: Thank you.

17                  I guess we'll find out who's in New York who wishes  
18     to be heard.

19                  Good morning.

20                  MR. SIZEMORE: Yes. Good morning, Your Honor. My  
21     name is Luke Sizemore from Reed Smith on behalf of the Bank of  
22     New York Mellon.

23                  First, I want to say that I appreciate all of the  
24     work that the Oversight Board has done to work with Whitebox,  
25     Ambac and Bank of New York Mellon, to work through these

1      issues. And I generally concur with everything Mr. Rosen said  
2      except one clarification that I'd like to make.

3               I believe Mr. Rosen said there's an agreement on  
4      19.5. We are working toward an agreement and we hope those  
5      discussions continue. We're optimistic that those discussions  
6      would result in no objections to the plan, but conversations  
7      are ongoing.

8               And the Proposed Order that the Court has in front of  
9      it does include an express reservation of rights, I think with  
10     respect to each of Bank of New York Mellon, Whitebox and Ambac  
11     as to objections to confirmation of the plan, including with  
12     respect to 19.5. But again, Your Honor, we're hoping to work  
13     through those issues so that it is not an issue at  
14     confirmation.

15              THE COURT: Thank you for that clarification, but  
16     you -- Bank of New York Mellon continues to join in the  
17     application for my approval of this procedure for litigating  
18     the charging lien holdback issues in connection with 19.5?

19              MR. SIZEMORE: Yes, Your Honor. We support the  
20     procedure.

21              THE COURT: Thank you.

22              MR. ROSEN: Your Honor, I apologize. Mr. Sizemore is  
23     correct. Bank of New York Mellon continues to discuss certain  
24     issues with the Oversight Board.

25              They have provided us informally with some additional

1 comments to the plan of adjustment that they've asked us to  
2 consider, none of which obviously would require resolicitation  
3 because they are just technical in nature and go to the  
4 relationship of the Trustee itself to COFINA and the way to  
5 resolve certain outstanding issues.

6 THE COURT: Thank you for the additional  
7 clarification.

8 And so, Mr. Sizemore, were there any further remarks  
9 that you wish to make?

10 MR. SIZEMORE: No, Your Honor. Thank you for your  
11 time.

12 THE COURT: Thank you.

13 The Urgent Motion is granted, and I will enter the  
14 Proposed Order in connection with that motion, which is docket  
15 entry 4457 in case 3283.

16 MR. ROSEN: Thank you very much, Your Honor. I  
17 believe that may conclude this morning's agenda.

18 THE COURT: It looks like there is no one else queued  
19 up to be heard, and so I think our agenda is indeed concluded.

20 And so the next scheduled hearing date is the January  
21 16, 2019, hearing on the COFINA Plan and the 9019 motion, as  
22 well as the Bank of New York Mellon 19.5 related motion that  
23 will take place here in San Juan with a video connection to  
24 New York.

25 I would like to thank the court staff in Puerto Rico,

1      Boston and New York for their work in preparing for and  
2      conducting today's hearing, and their superb ongoing support  
3      of the administration of these very complex cases.

4              Keep well, everyone, and happy holidays and safe  
5      travel to all.

6              MR. ROSEN: Same to you, Your Honor. Thank you.

7              (At 11:13 AM, proceedings concluded.)

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1      U.S. DISTRICT COURT        )

2      DISTRICT OF PUERTO RICO)

3

4            I certify that this transcript consisting of 65 pages is  
5            a true and accurate transcription to the best of my ability of  
6            the proceedings in this case before the Honorable United  
7            States District Court Judge Laura Taylor Swain on December 19,  
8            2018.

9

10

11            S/ Amy Walker

12            Amy Walker, CSR 3799

13            Official Court Reporter

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